

COMMENTS ON PROPOSED AMENDMENT OF RULES:

3.915, 3.963, 3.965, 3.966, 3.972, 3.973, 3.974, 3.975, 3.976 & 3.978

3.915(B)(2)(a):

I agree that it is important for the lawyer guardian ad litem to meet with their client in the same manner as if they were privately retained. They owe the same standard of care to represent the child-client as they would provide to an adult client. A good argument can be made that children are more vulnerable than adults and need a higher level of representation. What is left unsaid in the rule is if the court finds that the failure to meet is not excusable what sanction should be levied on the present lawyer guardian ad litem? Certainly the court can discharge them and refuse to appoint them again. But, should there be a more serious sanction to emphasize the importance of the job?

3.963(B)(1) & (2):

I believe that the word “officer” referring to a “peace officer” should remain in the rule. In emergency situations protective services workers need to take police with them. DHS workers, unlike court probation officers, are not endowed with any police powers. I do not think that a court rule can give them statutory authority to arrest or even take into custody. See MCR 3.903(A)(16).

3.965(B)(11)

Title IV-E does not allow the court to make a direct placement into foster care, if the court does so then the child becomes ineligible for Title IV-E funding. The courts routinely place the child in the care of DHS using the words of the new form JC 11a, which reads “...placed with the Department of Human Services for care and supervision...” I see no practical need for the change.

3.973(C):

In my experience thirty-five (35) days is not long enough in most cases to get the necessary evaluations completed and sent to the parties and the court so that a case services plan can be formulated and a meaningful disposition can be conducted. The court has limited authority to order parents to comply with psychological evaluations, substance abuse assessments, etc. until after it has full jurisdiction which occurs only after the adjudication. Twenty-eight (28) days is not enough time between adjudication and disposition. If courts take care of contrary to the welfare and reasonable efforts in a timely fashion Title IV-E funding should not be an issue.

3.974(A)(3):

I fully support this amendment. It clarifies a cloudy area of the law and gives full due process to the parties for a removal of a child from a home. The SCAO Family Court forms committee agreed that no separate form was needed for the emergency removal

hearing since it was no different than a preliminary hearing, which is why no separate form was created.

3.975(C)(2):

I fully endorse the additional paragraph which reminds the courts that review hearings must be held at the specified intervals regardless of whether a termination hearing has been held or a petition filed. Too often courts think that the time lines start anew after termination of parental rights when in fact that is just another legal event along the continuum of the case.

3.975(H):

I am unclear as to why this provision has been deleted. Maybe it goes without saying that a court can always return a child home without a hearing, as any due process concerns would be minimal for such an ex parte order. I would not want the absence of this paragraph to be interpreted that a child had to wait until a hearing before they could go home!

3.976(B)(1):

In the present court rule this initial PPH is triggered by three (3) things: adjudication, a judicial determination and a finding that reasonable efforts are not required. I do not understand why the adjudication threshold has been eliminated. It was the due process key to this rule. Replacing it with a “judicial determination” leaves me concerned that this could all happen without an adjudication, thus resulting in due process for the parents being significantly and negatively affected.

MCR3.976(C):

How can there be pre-adoptive parents at a PPH if parental rights have not been terminated? If that were the case then the parents would likely come to the conclusion that the case has already been decided against them and their parental rights were as good as terminated. This section needs to be rewritten to make it clear that pre-adoptive parents can only participate after the parent’s rights have been terminated.

Respectfully submitted,
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